

UPPER CLARK FORK STEERING COMMITTEE

MINUTES - December 8, 1998

MEMBERS PRESENT:

Gerald Mueller
Gary Ingman
Steve Schombel
Jim Dinsmore
Michael Kennedy
Brent Mannix

Eugene Manley
Ole Ueland
Bob Benson
Jon Sesso
Jules Waber
Marnie McClain

MEMBERS ABSENT:

Suzy Peraino
Holly Franz
Audrey Aspholm
Mike Griffith
Don Peters
Jim Quigley

Doug Mood
Liz Smith
Kevin Feedback
John Vanisko
Robin Bullock

VISITORS PRESENT:

Mike McLane
Brett Van Voast
Roxann Lincoln
Libby Maclay
Dave Meyer
John McDonald
John Blane
Barry. Duff
Jenny O'Mara
Susan Sakage
Julie A. McNichol
Pat McDonald

DNRC - Helena
DNRC - Helena
DEQ - Helena
Missoula C.D.
History Graduate Student
Upper Flint Creek Users
NRCS - Missoula
ARCO
DNRC - HRO
NRCS - Deer Lodge
DNRC - Missoula

The Upper Clark Fork River Basin Steering Committee met Tuesday, December 8, 1998 at the St. Mary's Center in Deer Lodge, MT.

WELCOME

Gerald Mueller welcomed Committee members and visitors and called the meeting to order. He then noted that the main focus of this meeting would be to discuss the report to the Legislature among others. The agenda was accepted as is.

The minutes for the November 9 meeting were discussed and approved as is.

WATER QUALITY MANAGEMENT WORK PLAN AND ACTIVITIES

Gerald Mueller updated the group on Water Quality Management Plan activities. The Race Track Pilot group was able to walk the creek along with residents and agency representatives. Together they examined the stream condition and causes for listing Racetrack as an impaired stream. As a result, DEQ's **Mike Suplee** and **Roxann Lincoln** wrote a letter clarifying problems with Racetrack Creek. This letter confirmed DEQ's position that it not recognize sedimentation as one of the current impairment problems on this stream. The issues are primarily dewatering and habitat alteration. The letter was sent out to all landowners on Racetrack creek. The next step (sometime in January) is to get the agencies together to develop specific proposals, then get the landowners back together to discuss them. **Jules Waber** said that the local people who were interested would retain their interest but were worried about dewatering. **Gerald Mueller** made clear that however the issues are handled, the TMBL law does not give the authority to take away people's water rights, and therefore, any solution would have to be on a voluntary basis. The pilot process is going very well. There were some questions about Racetrack and the "list".

Roxann Lincoln noted that DEQ is required to do a review of the impaired stream list by next October 1st, and that the next revision for Racetrack Creek will probably not reflect sedimentation – only habitat and dewatering problems. Roxann said that the older data reflected sedimentation problems and that the new data supports a determination that sedimentation no longer a current issue. DEQ will try to offer solutions to landowners to help them maintain a minimum flow for fisheries and other aquatic life.

Jules Waber explains that the next step is to get some more specific proposals together and then get the water rights holders together to discuss how the dewatering and habitat issues can be addressed. Jules understood that Eric Reiland, MT DFWP, was to explore the possibility of a water lease.

Ole Ueland pointed out that more water conservation would be helpful and that everyone should work together to address these issues. **Gary Ingman** asked Jules and John about the water distribution systems on the West Side, and if there is any possible way to move water between Warm Springs Creek and Silver Lake. Was there any way to use the ditches and stored Warm Spring Creek waters to replace some water rights from that system? **Jules Waber** does not think that the present ditch and water conveying system would make the idea feasible. **Jon Sesso** thinks that the proposal is a possibility, but limited. It would be better to improve Racetrack to the most practical point possible, then discuss what other global benefits could be accrued with stored water. The improvements in the Gardner ditch will make irrigators more effective in their conservation efforts.

Ole Ueland believes that the landowners are going to need help in their conservation efforts. He doubts that the landowner will be able to afford the price of all the improvements. He also gives credit to ARCO for stepping up and helping out. One of the things in the Warm Spring Watershed that hasn't been done yet is the improvement to the Gardener ditch. He points out that in return for giving up water, ARCO provided funding for this project and, as a result, this will reduce seepage. Some of the wetlands adjacent to the Clark Fork could be drained to provide ground for hay or grazing. However, those wetlands might be drying out because of the reduction in seepage. Wetlands are a natural storage place for water and a habitat for wildlife.

Jon Sesso asked Gary and Roxann if after making an honest effort to improve an area

and coming to the conclusion that it's as far as they can go, is the DEQ able to say "good enough," de-list the impaired stream, and move on to other areas?

Gary Ingman answers that, in general, the relative standards must be looked at. To get a plan approved as a TMDL, it must show that it is capable of restoring the water uses in that region. State statute doesn't provide for "mitigation." However, plans to rectify a dewatered condition are a voluntary issue.

Roxann Lincoln noted that Racetrack is over appropriated. As a group, over appropriation should be discussed to see if the situation can be rectified. If the problem can not totally be fixed, then a report to the EPA might be sent saying that it's the best that we can do, what do you think. She agrees that sometimes there is only so much you can do.

Ole Ueland suggest that Racetrack should stay on the list, as long as it's voluntary. Listing may bring a stream the attention, support, and funding needed to improve management coordination. However, the landowners are worried that this could become a mandatory program.

Roxann Lincoln says that the Racetrack Creek pilot program will show whether voluntary approaches will work.

Gerald Mueller – The next creek that we are considering for a pilot program is Fred Burr. The first meeting will be in Philipsburg at the Sunshine Station, 7:00PM on Thursday. Invitations have been sent out to all the landowners that live on or near the creek, and anyone here who wants to come is invited.

Gerald Mueller discusses the credibility issue associated with voluntary water quality management efforts brought up at the last 303D list meeting in Anaconda. A project was already underway with Fish, Wildlife and Parks (FWP) and was stopped. What has been ascertained about the problem is that FWP had a program underway to return the channeled portion of Warm Springs Creek to its original channel. In the course of the project, mill tailings were found that were going to be disturbed if the channel was returned to its original course. FWP then asked ARCO if they would relieve FWP of liability associated with disturbing the tailings. ARCO said no. The project was then terminated by FWP because of liability issues associated with superfund cleanup.

Since that time, I have talked to Julie Vasiglio from EPA. We've arranged to have FWP and EPA talk about these issues, and after those conversations are concluded, we may try to widen the scope of the people involved in the discussion. We're trying to find out what happened and why so we can report back to the landowners.

John Blane agrees and says that the NRCS can't do something that will damage other resources. Therefore we can't use NRCS money in a similar situation.

Gerald Mueller has noted that everyone he has talked to wants to finish the project, but the superfund liability issues must be dealt with. The committee must keep asking questions and act as a facilitator to get the process started again.

Drummond Sewage Treatment Plant

The people of Drummond have some questions about the Tri-State's Upper Clark Fork Nutrient TMDL . This was recently adopted for the whole Clark Fork. A town meeting in Drummond has been arranged and many of the Agency personnel will attend – it is scheduled for Jan 5 at 7:00 PM. There may be a potential to produce projects like the land application project in Deer Lodge where instead of returning treated sewage directly to the river and increasing nutrient levels, it can be used for growing hay or other crops. The conversation with the people of Drummond must be started so they can understand what the nutrient TMDL means to them and can perhaps identify some projects.

There is also a potential meeting to talk about the TMDL and the 303D list in the Potomac area. The Avon-Elliston area and the Ovando areas are also another possible place to initiate meetings of this type.

Jim Quigley thinks that we should go to these meetings with something useful. He also said that there are three creeks on the list that probably shouldn't be on it. They should be looked at a little closer and some updated data should be gathered. **Gary Ingman** says that we need some input from the local level and new data must be gathered. From this, we can find out if the creeks are inappropriately listed. If they are, let's get them off. **Jim Quigley** believes that organizing a meeting in the absence of better data and a clearer picture of the area is a waste of time and wants to wait until better data is available. **Gerald Mueller** agrees that it would be better to wait because there is value in information and people have better things to do than go to meetings. In addition, there would also be the example of Racetrack to hold up and learn from. **Roxann Lincoln** suggested that she and Mike Supplee coordinate with Jim on a sufficient critical data review on those 3 streams to determine whether they should stay on the list.

Jim Dinsmore asks about a clarification between water quality and quantity – is dewatering a water quality problem? **Gary Ingman** answers that water quality is a component of water use support that looks at chemical content, habitat quality, the condition of the stream bed and banks relative to wildlife support. Water quantity is related to all the designated uses: wildlife, agriculture, industrial, etc. HB546 Water rights supercede water quality laws and therefore all efforts must be voluntary.

Mike McLane added that it is possible to get a water right for water quality purposes. It is also possible to create water reservations to protect minimum stream flows specifically for water quality. In theory, there is also the possibility for conflict between water right laws and water quality laws. A water right provides the quantity of water necessary to meet a given beneficial use. It does not, however, necessarily provide that historic inefficient use of water is protected. That water might not, under certain conditions, be determined to be beneficially used. The potential exists for a third party to go to court and try to make water right holders use their water more conservatively with the intent to meet other water needs.

Gary Ingman points out that the voluntary efforts in Racetrack is a case example that we can hold up and say that we don't need laws to force the issue. It's been demonstrated.

Jon Sesso asks if DEQ is compelled to make a report to the legislature concerning the first two years of the pilot program. **Gary Ingman** informed the committee that EQC has already developed a status report tracking implementation and progress of that bill. **Jon**

Sesso expresses concern about the content of the report and whether there is enough input from the water users to avoid future conflict revolving around a switch in the priorities between water rights and water quality. **Mike McLane** says that the conflict between water quantity laws and water quality laws has not been addressed as of yet. If the pilot programs solve the problems, those issues won't need to be addressed. If de-watered streams are just de-listed or pushed to the bottom of the pile and not addressed, someone will force the issue later.

Gary Ingman compares the problems with Racetrack to the Helena water supply and discusses the problems with metals from abandon mines near Helena and the need for more stream flow for water dilution.

DRAFT REPORT TO THE LEGISLATURE

Gerald Mueller updates the committee on changes:

Sections 1 and 2

With respect to the Flint Creek return flow study, more material was obtained.

The committee asked to take out the Flint Creek executive summary and put it in the appendix. Two things now in the appendix: The executive summary from the Flint Creek Return Flow Study and an article that Terry Boler and Kirk Warren published in the Philipsburg newspaper.

I also included a statement in the appendix that Bureau of Reclamation is developing a computer model of hydrology that the community can use but that it is not yet complete.

Eugene Manley suggested that the Flint Creek Citizens Advisory Committee be mentioned in the report because of all the time, equipment and work they put into the Flint Creek Study.

Gerald Miller agreed and suggested that a sentence be added mentioning the assistance of the Flint Creek Advisory Committee. The committee voted and accepted the change.

Various typos were mentioned and noted for correction.

Section 3

Roxann Lincoln said that the second sentence should be changed to "the legislature has given DEQ only 3 years to determine which water bodies have problems and 10 years to develop plans to address these problems.

Section 4

The groundwater section is new. Any problems or changes?

Jon Sesso points out that there is a problem with the numbering of the objectives.

Garry Ingman says that Ground Water should be 2 words.

Jon Sesso suggests the section should close with a sentence saying that the ground water study is still ongoing should be included.

Section 5 – In-Stream Flow

Funding and Expenditures

Gerald Mueller -- Underlined the fact that there was some money returned.

Jon Sesso – Correlate the narrative of the budget with the budget. This is only the RRD budget and there are other funding sources not reflected in the numbers, and a lot of people are not going to read the narrative, they're just going to go right to the numbers. Add a separate chart that has all the funding sources listed.

What else should be in the report that isn't?

Jon Sesso believes there should also be a small section about the Transfer of the Silver Lake Water System to public ownership. In addition, there should also be a small section about the four or five other areas where the committee has provided agencies with guidance or facilitated a dialog on water issues in the basin. Past steering committee agendas will identify. These issues might include East Fork Reservoir, Georgetown/Silver Lake transfer and Washington Water Power re-licensing. There were no objections.

People this report should be sent to:

- County commissioners in the basin
- 6 conservation districts
- EQC -- Director
- DNRC -- Director
- Department of Commerce -- Director
- Governor's office
- DEQ -- Director
- FWP -- Director
- NRCS -- Director
- Trout Unlimited
- 2 copies to everyone on the committee

Ole Ueland said that collaboration should be emphasized because some of the agencies may be concerned that the committee is taking away some of their power and we should make sure that they know that is not our purpose. Our purpose is to bring together the various groups and collaborate to address problems.

Jon Sesso agrees that something like that should be included as a preface to the previously mentioned list of agenda items that will be included in the report.

Bob Benson brings up a point Ole made in the last meeting that did not get into the minutes. He said that it is important to put a sentence in the report that says that much of what goes on here is based on volunteerism.

Gerald Mueller will make the changes requested by the committee and bring it to the next meeting for the committee to review before it is sent to the Legislature.

The committee thanks Gerald for putting the report together.

Business from last meeting – Ole Ueland requested some additional information on farm and ranch plans and DNRC rights. John Blane came to talk about that subject.

John Blane -- NRCS has a new program called E.Q.I.P. that covers water quality and along with that water quantity. The other issue E.Q.I.P. deals with is any kind of grazing management. A plan must be written to get people into that program, and that plan addresses those issues. Points are then given based on that plan and what issue you are addressing.

NRCS has put together an interim plan addressing issues in a general sense, and if the plan gets funded, then a full-blown plan will be written.

Ole Ueland wants to point out the difference between the E.Q.I.P. plans and the individual farm and ranch plans. In addition, he thinks someone should go around to the ranchers and other water users to help them with their own plans.

John Blane says that the time to do each plan is much longer and that people higher in the food chain have decided that the agency should spend it's time on other things. As it stands, we have too few agents to help and not enough money to help everybody we would like. It's having a negative impact.

Summation by **Gerald Mueller**

The NRCS used to spend a lot more time working with landowners, one on one, developing conservation plans, but because of manpower problems you now develop plans only in conjunction with a specific approved project.

John Blane – Much of the focus has shifted to helping a larger group of landowners, say for an entire watershed, and developing a plan for that watershed. This helps to increase the number of funding sources that can be used.

Ole Ueland – If there are no people to help with conservation plans for individual landowners, we should at least have the guidelines so that we can make our own conservation plans. Most landowners don't know what has to go into a conservation plan and therefore can't create one, even if they wanted to.

Gerald Mueller proposes that the committee draft a letter to NRCS -- Shirley Gammon, Ray Beck and Mike Volesky -- asking that the NRCS develop guidelines for individual farm and ranch conservation plans. (Will bring draft back to the next meeting.)

Motion is carried.

WWP DAM RE-LICENSING

Gerald Mueller called Mick Robinson, the Governor's chief natural resource policy advisor and conveyed the committee's concern that the settlement is going to effect a lot of people and that they needed to be informed and have a chance to participate.

Mick said that there is talk of separating the water rights question out and moving forward on everything else.

WWP had sent some alternatives to the state to evaluate, but as of yet, the contents of those alternative proposals are not known.

Mike McLane clarified the situation with WWP -- The draft settlement did include language that separated the water rights issue out of the agreement so that the parties could sign the agreement, resolving those issues that had been successfully discussed. The water rights issues then could be dealt with either in a different arena or at a different time.

Even with that language, Montana said that they would not sign the settlement agreement. A letter was received from WWP that postponed the signing ceremony.

The Governor did receive two different proposals from WWP. Both set up a process to address the water rights/water management issue. One of them established a negotiation and consensus process, but if that failed, the issue would go to binding arbitration. The other proposal recommended an interim basin closure, three scenarios under which WWP could make call on junior users during the negotiations, and set up a team to create an alternative water management plan.

Gerald Mueller suggests that a letter should be written to the Governor from the committee that says that there are a lot of people who are not informed and not part of the process. If a decision is made effecting their water rights without informing and talking to those people, the Governor may have some problems.

Jim Dinsmore noted that the State is making a huge error by not getting this issue into a public forum. There are going to be many upset people.

Mike McLane – This is one of the first times Montana has used the FERC licensing process to balance other uses of water, including consumptive uses, against WWP use of water for hydropower.

Gerald Mueller suggests that the committee should get in touch with the Governor's office again and ask the questions: "Who is going to be effected by this decision? Have those people been informed about the decision or participated in any way? -- If it's the case that those people have not participated in any way and the decision goes forward without their participation, the potential for making a lot of people very angry, regardless of what the decision is, is great.

Michael Kennedy – wants letter to be stronger. Say there is a problem, and we are making you aware of the problem. The problem is, specifically, "People who will be affected have not been consulted, and without including them in the decision, it will make a lot of people very angry."

Committee accepted with Michael Kennedy's changes.

NEXT MEETING

The date for the next meeting:

- 1)Thursday, January 7, 1999
- 2)Deer Lodge, at the St. Mary's Center.

The primary topics will be:

- 1)The Report to the legislature
- 2)Continuing water quality management work plan activities
- 3)Possibly Washington Water Power